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Public Records @ \$38 A Page

A federal board has charged the equivalent of \$38 a page to release public records. Analysts cautioned the case is typical of the increasing use of large fees by government agencies to withhold documents under the *Access To Information Act*.

In a case that prompted an investigation, the Canada-Newfoundland & Labrador Offshore Petroleum Board charged \$4,452 to release 118 pages of public documents to a Calgary businessman, Paul Einarsson. The board estimated it took 394 hours of work to retrieve files requested by Einarsson in 2013.

“Clearly those charges were unreasonable and inflated,” said Einarsson. “There is no way it took 394 hours to come up with this.” Einarsson had sought records on the board’s distribution of seismic data earlier submitted by his company, Geophysical Service Incorporated.

“I still don’t have the information,” Einarsson said. “The 118 pages were heavily redacted – not just portions, but entire pages.” The board also charged sales taxes on the data – a cost disallowed under the *Excise Tax Act* – and a 20¢ a page photocopy fee. Both were refunded following an investigation by the Office of the Information Commissioner.

“Laws and rules are only good to the extent that people are honest,” Einarsson said. “Whatever rules or regulations you make, people will find a way around it. There’s a bigger issue here.”

Kris Klein, an attorney specializing in *Access To Information* issues, said charging prohibitive fees to release public records is now commonplace. “This has been a longstanding problem,” said Klein, partner with [NNovation LLP](#) of Ottawa. “I don’t know that it’s a new trend; it’s always been relatively bad.”

The information commissioner reported a 30 percent increase in complaints last year over concealment of public documents, including dubious charges. In one case the Privy Council Office tried to bill an applicant \$4,300 to retrieve files to cover the cost of “employee benefits”; the charge was reduced to \$120 on appeal.

“It seems the smaller the federal institution is, the more that *Access To Information* requests are seen as a burden,” said Klein. “They don’t have the dedicated, well-trained staff, and they approach it from the viewpoint of not going to great lengths to disclose information.”

“The system is designed to be used without a law degree,” Klein added; “I make my living off complex case, and there are too many where the rules frustrate applicants. It can be extremely frustrating for the average person who is trying to get information from their government, as is their right.”

“Pay For Ineptitude”

In Einarsson’s case, the information commissioner cited the petroleum board for repeated delays in releasing the documents but imposed no penalty. The office declined to take up Einarsson’s complaint over the \$4,452 charges after noting he missed a technical deadline to file.

[Ken Rubin](#), an *Access To Information* investigator based in Ottawa, said enforcement by the Office of the Information Commissioner has proven weak. “I rate them a D at best,” said Rubin. “I don’t use them at all anymore. They’re incompetent. They used to play a role, and they occasionally take up a case, but the commissioner’s role has long since been diminished.”

No federal estimate exists of how much government agencies have charged Canadians who apply to seek public records under the *Access Act*. Rubin described often-vexatious fees as a “loophole” to withhold records.

“There are ways of making life miserable and this is definitely one of them,” he said. “I’m trying to beat down a \$10,000 charge right now. I once got asked for a quarter-million dollars”; “They charge ‘search’ fees – why am I paying for their sloppy recordkeeping? – and then charge ‘preparation’ fees, which is like paying them to spend time dressing up exemptions.”

Rubin noted Canadians who apply for records can negotiate fees charged by departments and agencies, but added: “It’s a mug’s game. Fees are barriers, no doubt about it. You are paying for ineptitude or concealment.”

Of 680 *Access Act* complaints investigated last year, more than half resulted in departments releasing information they claimed they didn’t have, or insisted they were entitled to withhold.

By Tom Korsi  